



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Transfer of Funds from the Railroad Retirement Account to the Social Security Equivalent Benefit Account

File: B-220322

Date: March 9, 1987

DIGEST

Decision by Railroad Retirement Board (Board) to treat transfer of funds from the Railroad Retirement Account (RRA) to the Social Security Equivalent Benefit Account (SSEBA) on October 1, 1984, as a loan from the RRA that the SSEBA was subsequently required to repay with interest is correct. Under 45 U.S.C. § 231n-1, which established the SSEBA as a separate account effective October 1, 1984, to pay social security equivalent benefits due railroad retirees on or after that date, SSEBA is in effect, authorized "to borrow" funds from the RRA if needed to make monthly benefit payments.

DECISION

This decision is in response to a letter dated September 17, 1985, from the Executive Director of the Railroad Retirement Board (Board) requesting our legal opinion as to the "correctness of the method by which funds were transferred from the Railroad Retirement Account * * * to the Social Security Equivalent Benefit Account * * * to allow for the payment of benefits from the latter account on October 1, 1984."

As explained in the letter, the Board, which administers both accounts, treated the transfer as a loan from the Railroad Retirement Account (RRA) to the Social Security Equivalent Benefit Account (SSEBA) that was subsequently repaid by the SSEBA with interest. Later, the Office of Management and Budget (OMB) questioned whether the original transfer from the RRA constituted a loan or whether the transfer should have been treated as a nonreimbursable outlay from the RRA that was required to satisfy a valid obligation of that account.

As a result of the question over the Board's treatment of the transfer of funds, the Board requested our opinion. For the reasons set forth hereafter, we conclude that the Board's position, that the transfer in question constituted a loan from the RRA to the SSEBA that the latter account was required to repay, is correct.

BACKGROUND

The Railroad Retirement Act basically provides for two components or tiers of benefits that retired railroad employees receive. The first tier, which is the benefit component at issue in this case, is computed under the formula contained in the Social Security Act and is intended to approximate what the beneficiary would have received had the employee's service been covered by social security. See 45 U.S.C. §§ 231b(a)(1), 231c(a)(1), and 231c(f)(1) (1982). The second tier of benefits, which is based on the individual's railroad employment only, represents an industry pension-type payment.

Prior to October 1, 1984, both types of benefits were paid out of the same account--the RRA. See 45 U.S.C. § 231n (1982). The RRA received the revenues needed to make both types of payments from a variety of sources including social security-type taxes paid equally by railroad employers and employees (tier I tax), payroll (pension-related) taxes paid primarily by the railroad employer (tier II tax), and amounts transferred from the social security trust fund under the "financial interchange".^{1/} See H.R. Rep. No. 30, 98th Cong., 1st Sess. Part I, 17-18 and Part II, 30-31 (1983). --

However, section 501 of the Railroad Retirement Solvency Act of 1983, Pub. L. No. 98-76, 97 Stat. 411, 438, added a new section 15A to the Railroad Retirement Act, establishing the SSEBA as a separate account, effective October 1, 1984, for the specific purpose of paying social security equivalent

^{1/} The financial interchange system is a system of funds transfer that is designed to place the social security trust fund in the same financial position it would have been in had railroad employment been covered under social security. See GAO, Federal Financial Involvement, (HRD-86-88, B-222204, May 9, 1986), page 46, and H.R. Rep. No. 30, 98th Cong., 1st Sess. Part I, 17 (1983). Each year the Board determines what the SSA would have collected in payroll taxes and paid out in social security benefits if rail workers had been covered under social security. If the estimated taxes are greater than the estimated benefits, the Board transfers the difference to the Social Security Administration. If the opposite is true, the Social Security Administration transfers money to the Board. Since 1957, all financial interchange transfers have been from social security to the railroad retirement program.

benefits. See 45 U.S.C. § 231n-1 (Supp. II, 1985). Under 45 U.S.C. § 231n-1(b), the newly established SSEBA was to receive (1) all tier 1 tax revenues that would otherwise have been transferred to the RRA on or after October 1, 1984; (2) the revenues derived from the taxation of social security equivalent benefits; and (3) amounts transferred to the Railroad Retirement System through or borrowed against the financial interchange. See H.R. Rep. No. 30, 98th Cong. 1st Sess. Part 2, 31 (1983).

In the event that funds in the SSEBA are insufficient to pay benefits which are estimated to be due in a particular month, 45 U.S.C. § 231n-1(d)(1), provides as follows:

"Whenever the Board finds that the balance in the Social Security Equivalent Benefit Account will be insufficient to pay social security equivalent benefits which it estimates are due in any month, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Social Security Equivalent Benefit Account such moneys as the Board estimates will be necessary for the payment of such benefits, and the Secretary shall make such transfer. Whenever later in such month there is a transfer to the Social Security Equivalent Benefit Account under paragraph (2) or (4) of section 231f(c) of this title, the amount so transferred shall be immediately retransferred to the Railroad Retirement Account. The amount retransferred under the preceding sentence shall not exceed the amount of any outstanding transfers under this paragraph from the Railroad Retirement Account plus such additional amounts determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such outstanding transfers."

It is the Board's interpretation and application of this provision that is the primary issue in this case.

ISSUE

As explained above, when the SSEBA was established on October 1, 1984, the statute that created it provided funding for the new account from various sources. Accordingly, during the month of October 1984, funds began to flow into

the account from these different sources. However, none of the funding mechanisms specified in 45 U.S.C. § 231n-1(b) provided large amounts of money to the SSEBA immediately. Under section 1(p) of the Railroad Retirement Act, 45 U.S.C. § 231(p), the annuity payments the SSEBA was required to make on and after October 1, 1984, are defined as the "monthly sum which is payable on the first day of each calendar month for the accrual during the preceding calendar month." Thus, on October 1, 1984--the very first day of its existence--the SSEBA was required to pay social security equivalent benefits to retirees for the month of September. The amount of benefits to be paid far exceeded the relatively small sum of money that had accumulated in the account.

As explained in the Board's letter,

"In order to avoid an Anti-Deficiency Act violation or a delay in the payment of the social security equivalent benefits, the Board, pursuant to section 15A(d) [45 U.S.C. § 231n-1(d)(1)], requested the Secretary of the Treasury to transfer from the RR Account funds sufficient to meet the social security equivalent benefit payment obligations due on October 1, 1984. * * *"

In accordance with this request, the necessary amounts were transferred on October 1984 from the RRA to the SSEBA.^{2/} The Board treated this transfer as a loan under 45 U.S.C. § 231n-1(d)(1) that was subsequently repaid, with interest, by a transfer of funds from the SSEBA to the RRA. It was this decision by the Board, subsequently questioned by OMB, which resulted in the Board's request for our decision.

ANALYSIS

We conclude that the Board's position is correct. Its treatment of the October 1, 1984, transfer of funds from

^{2/} We have received a copy of a letter dated September 28, 1984, requesting the Secretary of the Treasury to "process a loan" from the RRA to the SSEBA on October 1, 1984, in the amount of \$307 million. We also obtained a copy of a "nonexpenditure transfer authorization" dated October 1, 1984, authorizing the transfer of \$307 million from the RRA to the SSEBA.

the RRA to the SSEBA as a loan that the SSEBA was obligated to repay with interest is consistent with the plain meaning of the statutory language. 45 U.S.C. § 231n-1(d)(1) provides that whenever the Board determines that the funds in the SSEBA will be insufficient to pay the social security equivalent benefits due in any month, it shall request the Secretary of the Treasury to transfer the necessary funds from the RRA to the SSEBA. The statute further provides that whenever later in the month the SSEBA receives a financial interchange payment from any of the social security trust funds, the amount "borrowed" from the RRA originally, plus interest, shall be retransferred to the RRA. That is precisely the procedure the Board followed when the SSEBA had insufficient funds on October 1, 1984, to pay the social security equivalent benefits that were due on that date. As stated in the Board's letter, the only authority in 45 U.S.C. § 231n-1 for transferring funds from the RRA to SSEBA is the "lending" authority in subsection (d)(1) that the Board relied on in this case.

When the Congress enacted this provision, it presumably knew that the Railroad Retirement Act requires social security equivalent benefits to be paid on the first of each month. Thus, by making this provision in the Railroad Solvency Act of 1983 effective on October 1, 1984,^{3/} the Congress must have intended for the SSEBA to pay social security equivalent benefits due on that date. Since the Congress did not provide for the immediate transfer of significant amounts of cash to the SSEBA, it could not possibly have had sufficient funds to make the required October payment. Presumably that is the reason the statute provided the SSEBA with the authority to "borrow" from the RRA.

OMB, in its letter of May 18, 1985, suggests that the Board's treatment of the transfer of funds from the RRA to the SSEBA may have been incorrect. OMB's position rests on the view that the RRA rather than the SSEBA was legally obligated to make the October 1, 1984 payment of social security equivalent benefits. Under this theory, the transfer of funds from the RRA to the SSEBA on October 1, 1984, would be seen as a nonreimbursable disbursement of funds from the RRA--through its conduit, the SSEBA--to the ultimate beneficiaries, which was required to liquidate an obligation of the RRA that arose in September 1984, before the SSEBA came into existence. We cannot accept this theory for two reasons.

^{3/} Other sections of the Railroad Retirement Solvency Act of 1983 have different effective dates.

First, while it is true, under 45 U.S.C. § 231(p), that the annuity payable on the first of any month represents payment for the "accrual" of benefits during the preceding month, a beneficiary does not become legally entitled to an annuity payment for a particular month until the month has ended. In accordance with 45 U.S.C. §§ 231d(c)(1) and (9), an annuity does not accrue to an individual for the calendar month in which the individual dies. Thus, an individual who dies on the last day of a month would not have accrued any benefits for that month. Therefore, the obligation of the Board to pay social security equivalent benefits for the month of September 1984 did not arise until September was completed and October had begun. By that time, the SSEBA had already been established for the specific purpose of paying all social security equivalent benefits due on or after October 1, 1984. It follows that the payment of benefits for September 1984 was not an obligation of the RRA.

Second, even if we ignore the issue of when the obligation arises, there is another reason to support the Board's action. If the RRA had received the funds to make the October 1 payment, it would be reasonable to hold that the RRA should be responsible for paying September 1984 benefits that were due on October 1, 1984. However, that was not the case. As explained earlier, the primary revenues that support the payment of social security equivalent benefits are tier I taxes and, more importantly, amounts transferred from the social security trust funds under the financial interchange. For purposes of this discussion, we can assume that the revenues for each month, particularly the monthly financial interchange payment, are to be used, at least in part, to pay social security equivalent benefits for that month. Under the Railroad Retirement Act, these revenues are not required to be deposited until after the month has ended. Therefore, the revenues for September presumably were credited to the SSEBA rather than to the RRA, in accordance with the express language of 45 U.S.C. § 231n-1(b)(4), which provides as follows:

"Amounts appropriated or transferred to the Social Security Equivalent Benefit Account under this section should be credited or transferred to such Account at the same time and in the manner as such amounts would have been credited or transferred to the Railroad Retirement Account but for this section."

In these circumstances, in which the RRA never received the funds to cover the October 1, 1984 payment, it would have

been unreasonable for the Board to charge the payment against the RRA, and would have been inconsistent with one of the objectives of the legislation to "provide for improved accounting control and funding source integrity." See H.R. Rep. No. 30, 98th Cong., 1st Sess. Part 2, 31 (1983).

In accordance with the foregoing, the Board's treatment of this transfer of funds from the RRA to the SSEBA on October 1, 1984, as a loan that the SSEBA was required to repay to the RRA with interest, is legally correct.

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for Comptroller General
of the United States